

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION
OF THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX
REFUND SCHEME LITIGATION

This document relates to all cases.

MASTER DOCKET

18-md-2865 (LAK)

**DEFENDANTS' RULE 44.1 NOTICE OF INTENT TO RAISE
ISSUES OF FOREIGN LAW**

Pursuant to Federal Rule of Civil Procedure 44.1, and Pretrial Order No. 36, Paragraph 4, Defendants John van Merkensteijn, III, Elizabeth van Merkensteijn, Azalea Pension Plan, Basalt Ventures LLC Roth 401(K) Plan, Bernina Pension Plan, Bernina Pension Plan Trust, Michelle Investments Pension Plan, Omineca Pension Plan, Omineca Trust, Remece Investments LLC Pension Plan, Starfish Capital Management LLC Roth 401(K) Plan, Tarvos Pension Plan, Voojo Productions LLC Roth 401(K) Plan, Xiphias LLC Pension Plan, Richard Markowitz, Jocelyn Markowitz, Avanix Management LLC Roth 401(K) Plan, Batavia Capital Pension Plan, Calypso Investments Pension Plan, Cavus Systems LLC Roth 401(K) Plan, Hadron Industries LLC Roth 401(K) Plan, RJM Capital Pension Plan, RJM Capital Pension Plan Trust, Routt Capital Pension Plan, Routt Capital Trust, Robert Klugman, RAK Investment Trust, Aerovane Logistics LLC Roth 401K Plan, Edgepoint Capital LLC Roth 401K Plan, Headsail Manufacturing LLC Roth 401K Plan, The Random Holdings 401K Plan, The Stor Capital Consulting LLC 401K Plan, and Michael Ben-Jacob (collectively, "Defendants") in the above-captioned action, by and through the undersigned counsel, hereby identify the issues of foreign law they intend to raise.

Defendants intend to raise issues of Danish law, including those set forth in the declarations of Kasper Bech Pilgaard (dated June 11, 2019 (ECF No. 139), April 27, 2022 (ECF No. 801), and June 27, 2022 (ECF No. 838)) and Anders Ørgaard (dated November 22, 2021 (ECF No. 802) and June 24, 2022 (ECF No. 839)). These issues include:

- 1) The Danish statute of limitations, including the inquisitorial procedure and investigative obligation (Ørgaard Decl., Nov. 22, 2021, ECF No. 802 at ¶¶ 12–35; Ørgaard Decl., June 24, 2022, ECF No. 839 at ¶¶ 5–19, 21, 23–25; Pilgaard Decl., April 27, 2022, ECF No. 801 at ¶ 101, 141–145).
- 2) Ownership and administration of dividend withholding tax collected by Skatteforvaltningen (“SKAT”) and assessment of dividend income and tax by SKAT (Pilgaard Decl., June 11, 2019, ECF No. 139 at ¶¶ 29–46; Pilgaard Decl., April 27, 2022, ECF No. 801 at ¶¶ 41–58, 110–117; Pilgaard Decl., June 27, 2022, ECF No. 838 at ¶¶ 66–68).
- 3) Danish law regarding beneficial ownership of dividends (Pilgaard Decl., April 27, 2022, ECF No. 801 at ¶¶ 146–203; Pilgaard Decl., June 27, 2022, ECF No. 838 at ¶¶ 5–18, 84–86, 95–106).
- 4) The inapplicability of the civil law principle of *nemo dat* to ownership of securities under Danish law (Pilgaard Decl., June 27, 2022, ECF No. 838 at ¶¶ 87–94).
- 5) Danish law regarding taxation of derivatives.
- 6) Whether SKAT is the same legal entity as the Kingdom of Denmark or the Danish Ministry of Finance (Pilgaard Decl., April 27, 2022, ECF No. 801 at ¶¶ 13–54).
- 7) Whether SKAT is entitled to bring these claims on behalf of the Kingdom of Denmark under Danish law (Pilgaard Decl., April 27, 2022, ECF No. 801 at ¶¶ 52–54, 59–61).

Dated: May 31, 2024
New York, New York

KOSTELANETZ LLP

/s/ Sharon L. McCarthy
Sharon L. McCarthy
Nicholas S. Bahnsen
Daniel C. Davidson
7 World Trade Center, 34th Floor
New York, New York 10007
Tel: (212) 808-8100
smccarthy@kostelanz.com

Attorneys for Defendants John van Merkensteijn, III, Elizabeth van Merkensteijn, Azalea Pension Plan, Basalt Ventures LLC Roth 401(K) Plan, Bernina Pension Plan, Bernina Pension Plan Trust, Michelle Investments Pension Plan, Omineca Pension Plan, Omineca Trust, Remece Investments LLC Pension Plan, Starfish Capital Management LLC Roth 401(K) Plan, Tarvos Pension Plan, Voojo Productions LLC Roth 401(K) Plan, Xiphias LLC Pension Plan

WILMER CUTLER PICKERING HALE AND
DORR LLP

/s/ Peter Neiman
Peter Neiman
Andrew Dulberg
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800
peter.neiman@wilmerhale.com

Attorneys for Defendants Richard Markowitz, Jocelyn Markowitz, Avanix Management LLC Roth 401(K) Plan, Batavia Capital Pension Plan, Calypso Investments Pension Plan, Cavus Systems LLC Roth 401(K) Plan, Hadron Industries LLC Roth 401(K) Plan, RJM Capital Pension Plan, RJM Capital Pension Plan Trust, Routt Capital Pension Plan, Routt Capital Trust

KATTEN MUCHIN ROSENMAN LLP

/s/ David L. Goldberg

David L. Goldberg
Michael M. Rosensaft
50 Rockefeller Plaza
New York, NY 10020
Tel.: (212) 940-8800
Fax: (212) 940-8776
david.goldberg@katten.com

*Attorneys for Defendants Robert Klugman, RAK
Investment Trust, Aerovane Logistics LLC Roth
401K Plan, Edgepoint Capital LLC Roth 401K
Plan, Headsail Manufacturing LLC Roth 401K
Plan, The Random Holdings 401K Plan, The Stor
Capital Consulting LLC 401K Plan*

DEWEY PEGNO & KRAMARSKY LLP

/s/ Thomas E.L. Dewey

Thomas E.L. Dewey
Sean K. Mullen
777 Third Avenue – 37th Floor
New York, New York 10017
Tel.: (212) 943-9000
Fax: (212) 943-4325
tdewey@dpklaw.com
smullen@dpklaw.com

KEKER, VAN NEST & PETERS LLP

/s/ Elliot R. Peters

Elliot R. Peters
Julia L. Allen
633 Battery Street
San Francisco, CA 94111
Tel.: (415) 962-7188
epeters@keker.com
jallen@keker.com

Attorneys for Defendant Michael Ben-Jacob